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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/457,847	12/09/1999	TOAN TRINH	7114	8139

27752 7590 09/30/2003

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
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EXAMINER

MOORE, MARGARET G

ART UNIT PAPER NUMBER

1712

DATE MAILED: 09/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/457,847

Applicant(s)

TRINH ET AL.

Examiner

Margaret G. Moore

Art Unit

1712

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14, 15, 33 to 42, 45 to 50, 56, 57, 59 to 64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14, 15, 33 to 42, 45 to 50, 56, 57, 59 to 64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

Art Unit: 1712

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 14, 15, 33 to 42, 45 to 50, 56, 57 and 59 to 64 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 41 of U.S. Patent No. 6,001,343. Although the conflicting claims are not identical, they are not patentably distinct from each other because of reasons of record.

This rejection was detailed in the previous office actions. Applicants have not provided a Terminal Disclaimer to overcome this rejection and as such it is maintained.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 14, 15, 33 to 42, 45 to 50, 56, 57, 59 to 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogel et al.

Vogel et al. teach an article of manufacture which contains an aqueous fabric wrinkle control composition. Starting on the bottom of column 4, Vogel et al. teach a shape retention polymer that is prepared from monomers preferably having a Tg within

Art Unit: 1712

the range of from about  $-10^{\circ}\text{C}$  to about  $150^{\circ}\text{C}$ . This meets the claimed component (A). Starting on column 8, line 40, Vogel et al. teach various surfactants meeting the limitation of claims 33 to 37 and 61. The bottom of column 12 teaches that the liquid carrier is preferably water. Columns 13 and 14 teach various packaging means, including the fact that the composition is preferably packages with a trigger dispenser.

This reference differs from the instant claims, specifically noting the limitations in claim 56, in two ways. First, this reference fails to specify the pH range of the composition. However, the Examiner notes that selecting a pH value within the broadly claimed range of more than about 3.5 would have been obvious for various reasons. First, the Examiner notes that it is well known in the art to use fabric treating compositions having a pH within the claimed range. This is, in fact, a conventional pH range for fabric treating compositions. On the other hand, the Examiner notes that the compositions in Vogel et al. appear to inherently fall within the claimed pH range due to the fact that they do not contain any strong acidic components. Finally, adjusting the pH range such that it falls within an operable level would have been obvious to one having ordinary skill in the art since an inoperable or non-preferred pH level would render the composition useless or undesirable. In this manner the claimed pH range would have been obvious to one having ordinary skill in the art in view of the teachings of Vogel et al.

With regards to the claimed requirement that the article of manufacture be packaged with a set of instructions, the Examiner notes that this too would have been readily obvious to the skilled artisan in view of the teachings of Vogel et al. That is, Vogel et al. provide specific instruction on commercial packaging. In addition they provide specific teachings on how to use the composition. It naturally follows that patentees would want to provide the instructions on how to use the composition therein to the consumer, in an effort to ensure that the product is used effectively and as intended. As such this limitation too would have been obvious over the teachings of Vogel et al.

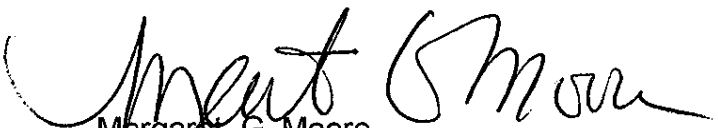
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret G. Moore whose telephone number is 703-

Art Unit: 1712

308-4334. The examiner can normally be reached on Monday to Wednesday and Friday, 10am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Dawson can be reached on 703-308-2340. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Margaret G. Moore  
Primary Examiner  
Art Unit 1712

mgm  
09/25/03